

COMMISSIONERS APPROVAL

ROKOSCH

GRANDSTAFF *cg*

THOMPSON *at*

CHILCOTT *cg*

DRISCOLL *ld*

PLETTENBERG (Clerk & Recorder)

Date.....December 18, 2007

Members Present..... Commissioner Jim Rokosch,  
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg  
Chilcott and Commissioner Kathleen Driscoll

Minutes: Beth Perkins

The Board met for a public meeting for Super One addition and one variance request.  
Present were Planner Tristan Riddell, WGM representatives Kristin Smith and Julie  
Titchbourne.

Commissioner Rokosch called the meeting to order. He requested any disclosures or  
conflicts of interest, hearing none. He requested the Planning Staff Report to be read.

Tristan presented the staff report as follows:

**SUPER ONE ADDITION (YOUNG)  
THREE-LOT MINOR SUBDIVISION AND ONE VARIANCE REQUEST**

**STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS**

**CASE PLANNER:** John Lavey

**REVIEWED/  
APPROVED BY:** Renee Lemon

**PUBLIC HEARINGS/  
MEETINGS:**

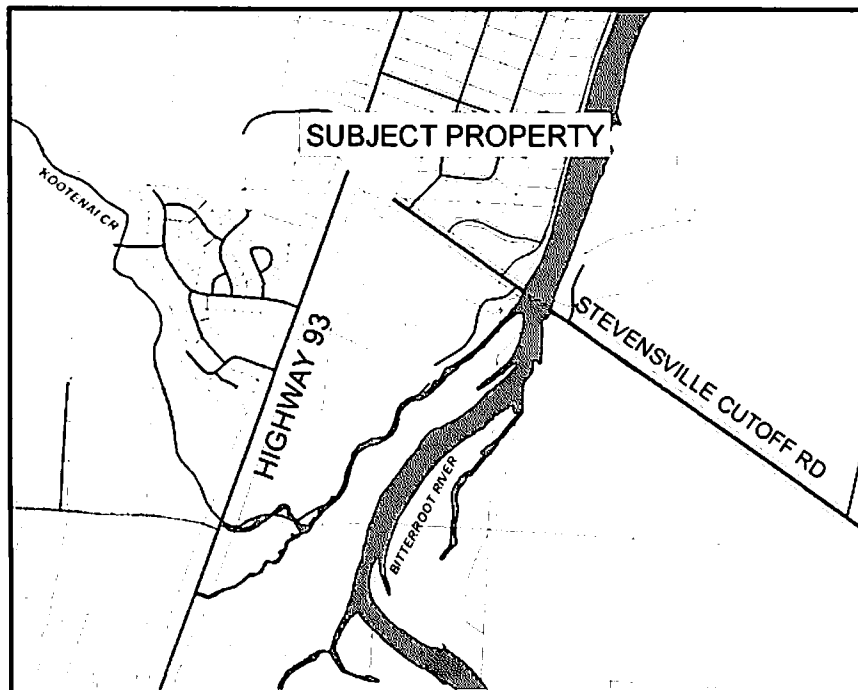
BCC Public Meeting: 9:00 a.m. December 11, 2007  
Deadline for BCC action (35 working days): December 28, 2007

**SUBDIVIDER:** Super One Foods/John Young  
1211 E Columbia Ave.  
Spokane, WA 99208

**OWNER:** Ronald and Joanne McIntire  
5588 N. Wall St  
Spokane, WA 99205-6403

**REPRESENTATIVE:** WGM Group, Inc  
PO Box 16027  
Missoula, MT 59808-6027

**LOCATION OF REQUEST:** The property is located west of Stevensville off Stevensville Cutoff Road and US Highway 93. (See Map 1)



Map 1:

**Location Map**  
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

Tract 1 of COS# 5512-TR, less Highway #556837,  
located in the SE ¼ of Section 21, T9N, R20W,  
P.M.M., Ravalli County, Montana.

**APPLICATION**

**INFORMATION:**

The subdivision application was determined complete on November 6, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-16 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

**LEGAL NOTIFICATION:** Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked November 6, 2007.

**DEVELOPMENT  
PATTERN:**

Subject property	Commercial
North	Commercial
South	Vacant
East	Commercial
West	Commercial

**INTRODUCTION**

The Super One Addition Minor subdivision is a three-lot split proposed on 12 acres. The Super One grocery store and attached commercial units currently exist on proposed Lot 1. Lots 2 and 3 are proposed for commercial use. Staff understands that a branch of the Ravalli County Bank will be located on proposed Lot 2, and that no specific enterprise has been chosen for Lot 3 at this time.

Concurrent with the subdivision proposal, the subdivider is requesting one variance from Section 5-4-5(b) (2), which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots. A paved parking lot currently exists on the property and is proposed to provide access to all lots within the subdivision, negating the need for a road.

*Staff recommends conditional approval of the variance request and conditional approval of the subdivision proposal.*

**RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS  
DECEMBER 11, 2007**

**SUPER ONE ADDITION  
THREE-LOT MINOR SUBDIVISION AND ONE VARIANCE REQUEST**

**RECOMMENDED MOTIONS**

1. That the variance request from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

2. That the Super One Addition Minor Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION AND VARIANCE REQUEST**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

***Limitation of Access onto a Public Road.*** A "no-ingress/egress" restriction exists along the US Highway 93 and Stevensville Cutoff Road frontages of this subdivision, excepting the approved approaches to the parking lot off Stevensville Cutoff Road. All lots within this subdivision must use the approved approaches. This limitation of access may be lifted or amended only with the approval of the Montana Department of Transportation and the Board of Ravalli County Commissioners. *(Effects on Local Services and Public Health and Safety)*

***Notification of Common Roadways Maintenance Agreement.*** The common roadways within the Super One Addition subdivision (parking lots/parking areas, approaches, medians, and other traffic-related infrastructure) are not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Common Roadways Maintenance Agreement was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. *(Effects on Local Services and Public Health and Safety)*

***Notification of Proximity to a Potential Dam Inundation Area in the Event of a Catastrophic Failure of the Painted Rocks Reservoir Dam.*** The eastern portion of the property may be located within the dam inundation area for the Painted Rocks Reservoir Dam. The Painted Rocks Reservoir Dam is owned and operated by the State of Montana, Department of Natural Resources and Conservation District, Water Resources Division, Dam Safety Program (48 North Last Chance Gulch, P.O. Box 201601, Helena, Montana, 59620-1621). A map of the probable extent of the inundation area is included as an exhibit to this document [the subdivider shall include the exhibit as an attachment]. *(Effects on Public Health and Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

***Waiver of Protest to Creation of RSID/SID.*** Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system,

and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs.  
(*Effects on Local Services*)

**Living with Wildlife.** Owners and/or renters of lots in this commercial subdivision (hereafter, "occupants") must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage and properly storing garbage and other potential attractants. Occupants must be aware of potential problems associated with the presence of wildlife such as deer, black bear, fox, raccoon, skunk, and other species. Please contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help owners "live with wildlife." Alternatively, see the Education portion of FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov). (*Effects on Wildlife & Wildlife Habitat*)

The following covenants are designed to help minimize problems that occupants could have with wildlife, as well as helping occupants protect themselves, their property and the wildlife that Montanans value.

- (a) Occupants must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on landscaping--green lawns, flowers, ornamental shrubs and trees--in this subdivision. Occupants should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- (b) **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and other wildlife.
- (c) **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposefully or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in an "artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, occupants should be aware that deer might occasionally attract mountain lions to the area.

**Lighting for New Construction.** To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off

lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit [www.darksky.org](http://www.darksky.org).  
(Effects on Natural Environment and Wildlife and Wildlife Habitat)

**Radon Exposure.** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their structures tested for radon. Contact the Ravalli County Environmental Health Department for further information.  
(Effects on Public Health & Safety)

**Control of Noxious Weeds.** A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (Effects on Agriculture and Natural Environment)

**Commercial Use Only.** For as long as the interim zoning regulation recorded by the Ravalli County Commissioners as Resolution 2038 remains in effect, residential development shall be prohibited and the lots shall be used for commercial purposes exclusively. Upon the expiration of the emergency zoning regulation, this requirement shall cease. However, if the interim zoning ceases through the adoption of permanent zoning, those regulations shall then be in effect. (Compliance with Applicable Zoning Regulations)

**Posting of County-Issued Addresses for Lots within this Subdivision.** The Stevensville Rural Fire District has adopted the Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the accessway leading to each lot as soon as construction on the structure begins. (Effects on Local Services and Public Health & Safety)

**Access Requirements for Lots within this Subdivision.** The Stevensville Rural Fire District has adopted the Fire Protection Standards. All accesses over 150' in length must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Stevensville Rural Fire District for further information. (Effects on Local Services and Public Health & Safety)

**State Commercial Building Standards.** The State of Montana has building codes for commercial buildings. For more information, contact the Montana Department of Labor and Industry, at PO Box 1728, Helena, MT 59624-1728 or call 406-444-2840. *(Effects on Local Services and Public Health & Safety)*

**Amendment.** Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdividers shall provide a letter from the Stevensville Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution for Lots 2 and 3 has been made to the Stevensville Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services and Public Health & Safety)*
6. The final plat shall show a no-ingress/egress zone along the US Highway 93 and Stevensville Cutoff Road frontages of the subdivision, excepting the approved approaches to the parking lot off Stevensville Cutoff Road, as approved by the Montana Department of Transportation. *(Effects on Local Services and Public Health and Safety)*
7. Stop signs and road name signs shall be installed at the intersection of all accesses with Stevensville Cutoff Road prior to final plat approval. *(Effects on Local Services and Public Health and Safety)*
8. The subdivider shall submit an (amount)-per-unit contribution for Lots 2 and 3 to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services prior to final plat approval. *(Effects on Local Services and Public Health & Safety)*

9. The following statement shall be shown on the face of the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (*Effects on the Natural Environment*)
10. Prior to final plat approval, the accessways to Lots 2 and 3 shall be constructed as approved by the Road and Bridge Department. Prior to construction, the final parking lot plans are required to be reviewed and approved by the Road and Bridge Department. Post construction, the Road and Bridge Department will conduct a final review. Please see the Road and Bridge Department's Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements for more information. (*Variance, and Effects on Local Services and Public Health and Safety*)

#### **FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)**

*The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.*

1. A statement from the project surveyor or engineer prior to final plat approval outlining how each final plat requirement or condition of approval has been satisfied.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) The final plat shall conform to the preliminary plat decision. The features listed in RCSR Section 3-4-4(a)(ii) are required on the Final Plat. Following are specific features related to this subdivision:
  - a) Existing and proposed utility easements, as shown on the preliminary plat, shall be shown on the final plat.
  - b) No ingress/egress zones along US Highway 93 and Stevensville Cutoff Road, excepting the approved approaches off Stevensville Cutoff Road.
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
4. Any variance decisions shall be submitted with the final plat submittal.
5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
6. The final plat review fee shall be submitted with the final plat submittal.
7. Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.



9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.
10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.
11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
12. Road and Driveway approach and encroachment permits from RCRBD and/or MDOT as appropriate.
13. Final Road Plans and Grading and Storm Water Drainage Plan for the parking lot areas shall be submitted with the final plat submittal.
14. Utility availability certification(s) shall be submitted with the final plat submittal.
15. A Common Roadways Maintenance Agreement, signed and notarized, shall be submitted with the final plat submittal.
16. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
17. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plat submittal.
18. A copy of the letter sent to the School District stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
19. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2).
  - a. Specific infrastructure improvements required for this subdivision are the installation of stop signs and road name signs at the intersection of all accesses with Stevensville Cutoff Road, and the construction of the accessways to Lots 2 and 3 as shown on the preliminary plat and as approved by the Road and Bridge Department.

## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PREREQUISITES TO APPROVAL**

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

#### **A. Provides easements for the location and installation of any planned utilities.**

##### **Findings of Fact**

1. Existing utilities are located along the US Highway 93 and Stevensville Cutoff Road frontages of the subdivision. (Super One Addition Preliminary Plat Application)
2. An existing 10-foot wide highway lighting right-of-way is located along the Stevensville Cutoff Road frontage of proposed Lot 1. (Super One Addition Preliminary Plat Application)
3. A proposed 20-foot wide utility easement will traverse the western portion of proposed Lot 1 to provide utilities to proposed Lots 2 and 3. (Super One Addition Preliminary Plat Application)
4. A "cross-easement" exists for the subject property that allows access to the entirety of the site for, among many other things, lighting facilities. (Document #222967, Super One Addition Preliminary Plat Application)
5. *Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)*

##### **Conclusion of Law**

The proposed subdivision application provides for utility easements.

#### **B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.**

##### **Findings of Fact**

1. The subject property is accessed by US Highway 93 and Stevensville Cutoff Road, and the internal access network (existing and any proposed parking areas/accessways). (Super One Addition Preliminary Plat Application)
2. US Highway 93 and Stevensville Cutoff Road provide legal and physical access to the site. (Super One Addition Preliminary Plat Application)
3. A "cross-easement" exists for the subject property that provides legal access to the site. The "cross-easement" provides for a "non-exclusive easement for pedestrian and vehicular ingress, egress, passage and traffic in, over, upon, across and through the entire parcel for the orderly development thereof". The "cross-easement" is of perpetual duration. (Document #222967, Super One Addition Preliminary Plat Application)

4. A Common Roadways Agreement outlines what parties are responsible for maintaining the accessways within the subdivision. (Super One Addition Preliminary Plat Application)
5. The applicant is proposing to construct a paved extension from the existing parking lot to provide physical access to Lot 2 and 3. (Super One Addition Preliminary Plat Application)
6. *To ensure physical access to Lots 2 and 3, the final parking lots plans shall be reviewed and approved by the Road and Bridge Department, the parking lot shall be constructed, and the Road and Bridge Department shall approve the construction. (Final Plat Requirement 13, Road and Bridge Department Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements, and Condition 10)*

#### Conclusion of Law

Legal and physical access will be provided on US Highway 93, Stevensville Cutoff Road, and the internal parking areas/accessways.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

#### Findings of Fact

1. To mitigate impacts on public health and safety, the applicant is required to install stop signs and road name signs at the intersection of Stevensville Cutoff Road and each access to the subdivision before final plat approval. (Condition 7)
2. The applicant is proposing to construct the accessways to Lots 2 and 3 as proposed in the parking lot plans that have been preliminarily approved by the Ravalli County Road and Bridge Department. (Super One Addition Preliminary Plat Application)
3. The applicant is required to submit evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval. (Section 3-4-4(a)(xxvi), RCSR)

#### Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Finding of Fact

The property does not have water rights. (Super One Preliminary Plat Application)

Conclusion of Law

Since there are no water rights, this requirement has been met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Finding of Fact

There are no irrigation easements on the property. (Super One Preliminary Plat Application)

Conclusion of Law

Since there are no irrigation easements, this requirement has been met.

- F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.**

Findings of Fact

- i. All lots within the subdivision are proposed for commercial use. (Super One Preliminary Plat Application)
- ii. Park dedication may not be required for subdivisions where all parcels are proposed for non-residential use. (MCA Section 76-3-621(3)(b))

Conclusion of Law

Since this is a commercial subdivision, no parkland is required.

**G. Overall Conclusion on Prerequisite Requirements**

With the conditions and requirements of final plan approval, there is credible evidence that the subdivision application meets the prerequisite requirements.

**COMPLIANCE WITH APPLICABLE REGULATIONS**

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

- A. These regulations, including, but not limited to, the standards set forth in Chapter 5.**

Findings of Fact

1. The subdivider is requesting a variance from 5-4-5(b)(2), for relief from constructing a chip-sealed internal road. The subdivider is proposing to expand the existing park lot and accessways to serve Lots 2 and 3. Staff is recommending conditional approval of the variance. (Super One Preliminary Plat Application and Planning Staff's Variance Report)
2. With variance approval, the lot layout as indicated on the preliminary plat meets the design standards in Chapter 5 of the RCSR. (Super One Addition Subdivision File)
3. This development plan proposal has followed the necessary application procedures and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations. (Super One Subdivision File)

#### Conclusions of Law

1. The preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The procedures for the application and review of this proposed subdivision as outlined in Chapter 3 of the RCSR, have been followed.

#### **B. Applicable zoning regulations.**

##### Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting residential subdivisions to a density of one dwelling per two acres. (Resolution 2038).
2. The subdivider will be subject to a commercial covenant to restrict all uses within the subdivision to commercial use only. (*Condition 2*)
3. The property is not within one of the voluntary zoning districts in Ravalli County. (Super One Addition Preliminary Plat Application)

##### Conclusion of Law

With the condition requiring a commercial covenant, this proposal complies with existing zoning regulations.

#### **C. Existing covenants and/or deed restrictions.**

##### Finding of Fact

There are existing covenants on the property included in document #222967 that pertain to provisions for access and use restrictions on the parcel. (Super One Addition Preliminary Plat Application)

##### Conclusion of Law

The proposal complies with existing covenants

#### **D. Other applicable regulations.**

##### Findings of Fact

1. Following are applicable regulations:
  - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA

- Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
  - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
  - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
  - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. Prior to final plat approval, the applicants are required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

#### Conclusion of Law

With the requirements of final plat approval, the application will meet all of the applicable regulations.

#### **E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:**

##### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### **Findings of Fact:**

1. The proposed minor subdivision on 12 acres will result in three lots that range in size from 1.05 acres to 9.09 acres. The property is located approximately 1 mile northwest of the community of Stevensville off U.S. Highway 93. (Super One Addition Preliminary Plat Application)
2. The property is not adjacent to other agricultural properties. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services and 2005 Aerial Photography created by the National Agricultural Imagery Program)
3. The property has not been used for agricultural purposes for over a decade. (Super One Addition Preliminary Plat Application)
4. The existing Super One grocery store provides an opportunity for local agricultural producers to sell their products. (Super One Addition Preliminary Plat Application)
5. There is a soil type type listed as Farmland of Local Importance on approximately 30% of the property (Map Unit 305B). There is no prime farmland or farmland of statewide importance on the property. (*Web Soil Survey for Ravalli County*, Natural Resources and Conservation Service (NRCS))
6. *Following are conditions and requirements of final plat approval that will help mitigate the impacts of the subdivision on agriculture:*
  - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
  - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

**Conclusion of Law:**

Impacts of the subdivision on surrounding agriculture will be minimal.

**CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

**Finding of Fact**

According to the application, there are no water rights or irrigation infrastructure currently associated with this property.

**Conclusion of Law:**

This subdivision will have no significant impacts on agricultural water user facilities.

**CRITERION 3: EFFECTS ON LOCAL SERVICES**

**Findings of Fact:**

**Fire Department**

1. The subdivision is located within the Stevensville Rural Fire District. (Super One Addition Preliminary Plat Application)
2. The All Valley Fire Council, which includes the Stevensville Rural Fire Department, has adopted Fire Protection Standards (outlined in document from the Hamilton Rural Fire Department) that address access, posting of addresses, and water supply requirements. (Exhibit A-16)
3. *The following conditions will mitigate impacts of the subdivision on the Fire District:*
  - *Provisions in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
  - *The covenants shall include a recommendation that the commercial buildings within this subdivision are built to meet state building code standards. For more information, contact the Montana Department of Labor and Industry, at PO Box 1728, Helena, MT 59624-1728 or call 406-444-2840. (Condition 2)*
  - *The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*
  - *Prior to final plat approval, the subdividers shall provide a letter from the Stevensville Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution for Lots 2 and 3 has been made to the Stevensville Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)*

**School District**

4. Because all lots within the subdivision are proposed for commercial purposes, the Stevensville School District will be affected. (Super One Addition Preliminary Plat Application)

#### Public Safety

5. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Super One Addition Preliminary Plat Application)
6. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on August 29, 2007 and November 6, 2007, but no comments have been received from the Sheriff's Office. (Super One Addition Subdivision File)
7. This proposed subdivision is located 19 miles from the Sheriff dispatch in Hamilton and approximately 1 mile from a dispatch substation in Stevensville. (Super One Addition Preliminary Plat Application)
8. The applicant is not proposing a contribution to the Sheriff's Office, E-911, or the Department of Emergency Services. (Super One Addition Preliminary Plat Application)
9. There are three proposed commercial lots within this subdivision. It is estimated at build-out that this subdivision could generate a total of 575 to 875 vehicular trips per day, assuming 375 trips per day for the proposed bank and between 200 to 500 trips per day for Lot 3. (Super One Addition Preliminary Plat Application)
10. *To mitigate the impacts of the additional people that the commercial businesses on Lots 2 and 3 will serve on public safety services, the subdivider shall submit an (amount)per-lot contribution for Lots 2 and 3 to the Ravalli County Treasurer's Office to be deposited into account for Public Safety Services prior to final plat approval. (Condition 8)*

#### Emergency Services

11. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department or Missoula Emergency Services. Marcus Daly and Missoula Emergency Services were contacted, but no comments have been received to date. (Super One Addition Subdivision File)
12. *To mitigate impacts on emergency services, the subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*

#### Water and Wastewater Districts

13. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Super One Preliminary Plat Application)
14. *Final plat requirement 9 will ensure that the DEQ has reviewed the proposed wastewater treatment systems in accordance with their regulations.*

#### Solid Waste Services

15. Bitterroot Disposal provides service to this site. (Super One Addition Preliminary Plat Application)



16. Notification letters were sent to Bitterroot Disposal requesting comments on August 29, 2007 and November 6, 2007, but no comments have been received. (Super One Addition Subdivision File)

#### Utilities

17. The proposed subdivision will be served by Northwestern Energy, Ravalli Electric Cooperative, and Qwest Communications. Utility companies have been notified of the proposed subdivision. (Super One Addition Preliminary Plat Application)
18. Notification letters were sent to the utility companies requesting comments on August 29, 2007 and November 6, 2007. No comments have been received by either power company. Qwest provided a comment to the subdivider that telecommunications service will be provided to the development. (Subdivision File and Application)
19. *The following requirements will mitigate impacts of the subdivision on local utilities:*
- *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
  - *The applicant shall submit utility availability certifications from Northwestern Energy, Ravalli Electric Cooperative, and Qwest Communications prior to final plat approval. (Final Plat Requirement 14)*

#### Roads

20. There are three proposed commercial lots within this subdivision. It is estimated at build-out that this subdivision could generate a total of 575 to 875 vehicular trips per day, assuming 375 trips per day for the proposed bank and between 200 to 500 trips per day for Lot 3. (Super One Addition Preliminary Plat Application)
21. US Highway 93 and Stevensville Cutoff Road, a State road maintained by the County, provide access to the site. (Super One Addition Preliminary Plat Application)
22. The applicant is not required to improve or pay pro rata towards improving State-maintained roads. (Section 5-4-5, RCSR)
23. There is a proposed Common Roadways Maintenance Agreement for the internal parking areas/driving lanes. (Super One Addition Preliminary Plat Application)
24. The applicant is not proposing stop signs or road name signs at the intersections of the parking lot accesses with Stevensville Cutoff Road. (Super One Addition Preliminary Plat Application)
25. The parking lot plans have received preliminary approval from the Ravalli County Road and Bridge Department. (Exhibit A-9)
26. *To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:*
- *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ shall be submitted prior to final plat approval, if applicable. (Final Plat Requirement 10)*
  - *The accessways to Lots 2 and 3 shall be constructed as proposed in the parking lot plans preliminarily approved by the Ravalli County Road and Bridge Department. The final parking lot plans and actual construction shall be approved by the Ravalli County Road and Bridge Department prior to final plat approval. (Condition 10, Final Plat Requirement 13)*
  - *A Common Roadways Maintenance Agreement shall be signed, notarized, and submitted for the internal parking areas and accessways. (Final Plat Requirement 15)*

- *A notification of the Common Roadways Maintenance Agreement for the internal parking areas and accessways shall be included in the notifications document filed with the final plat. (Condition 1)*
- *The Common Roadways Maintenance Agreement shall state that other parcels that may have beneficial use of the internal parking areas and accessways shall be allowed to join as members of the agreement without the consent of the current members.(Condition 8)*
- *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)*
- *Stop signs and road name signs shall be installed prior to final plat approval. (Condition 7 and Final Plat Requirement 19)*
- *The final plat shall show a no-ingress/egress zone along the US Highway 93 and Stevensville Cutoff Road frontages of the subdivision, excepting the approved approaches to the parking lot off Stevensville Cutoff Road, as approved by the Montana Department of Transportation. (Conditions 1 and 6 and Final Plat Requirement 2)*
- *The applicant shall submit a final approved approach permit from the Montana Department of Transportation prior to final plat approval. (Final Plat Requirement 12)*

#### **Conclusion of Law:**

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

#### **CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT**

##### **Findings of Fact:**

##### **Water Quality**

1. There are permits from the Ravalli County Environmental Health Department for the existing drain fields currently serving the Super One grocery store on proposed Lot 1. (Septic permit #8947-E and #10482-R – Super One Addition Application)
2. The applicants are proposing individual wells and wastewater treatment facilities for Lots 2 and 3. The applicants submitted water and sanitation information per MCA 76-3-622 for the proposed systems. (Super One Addition Preliminary Plat Application)
3. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Application, MCA 76-3-622)
4. The Bitterroot River is located approximately 850 feet east of the subject property. The subject property is not within the 100 year floodplain of the river. (Ravalli County GIS Department data)
5. *The applicant is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

### Light Pollution

6. The addition of businesses in this area has the potential to increase light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark Sky Association)
7. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

### Vegetation

8. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that indicates spotted knapweed and houndstongue are growing on the property. (Super One Addition Preliminary Plat Application)
9. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (MCA 7-22-2152)
10. *To mitigate impacts on natural environment, the following items will be required for final plat approval:*
  - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*
  - *The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision. (Final Plat Requirement 11)*

### Historical/Archeological Sites

8. There are no known sites of historical significance on the property. (Super One Addition Preliminary Plat Application)
9. *To ensure that any possible historical sites are preserved, the following statement shall be shown on the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 9)*

### Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

### **CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT**

#### **Findings of Fact:**

1. In a letter received June 5, 2006, FWP stated that this property has a general likelihood of human/wildlife conflict and recommended including "living with wildlife" covenants. (Super One Addition Preliminary Plat Application)
2. The property is not located within big-game winter range. (FWP)
3. According to the Montana Natural Heritage Program, the Bald Eagle was identified as a species of concern that could exist in the same section as the proposal. The subdivider requested and received a waiver from the requirement to submit a

sensitive species report for the bald eagle because of lack of habitat on the property for the species. (Exhibit A-1 and Super One Addition Subdivision File)

4. *To mitigate impacts on wildlife, the following conditions shall be met:*
  - *The covenants shall include a living with wildlife section. (Condition 2)*
  - *The protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

#### Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

#### CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

##### Findings of Fact:

##### Traffic Safety

1. Access is proposed off Stevensville Cutoff Road from US Highway 93. (Super One Addition Preliminary Plat Application)
2. *The requirements and conditions listed under Roads in Criterion 3 (Effects on Local Services) will mitigate the impacts of the subdivision on traffic safety.*

##### Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Stevensville Rural Fire District, the Ravalli County Sheriff's Office, Ravalli County E-911, and the Ravalli County Department of Emergency Services, Missoula Emergency Services, and Marcus Daly Memorial Hospital EMS Department. (Super One Addition Preliminary Plat Application)
4. The "cross-easement" filed as document #222967 provides for fire protection and emergency ingress and egress to and from the buildings on the property. (Super One Addition Preliminary Plat Application)
5. *The requirements and conditions listed under Fire Department, Public Safety, Emergency Services, and Roads in Criterion 3 (Effects on Local Services) will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

##### Water and Wastewater

6. There is an existing wastewater treatment facility and public water supply that have been permitted and serve the Super One grocery on proposed Lot 1. The applicants are proposing individual wells and wastewater facilities to serve Lots 2 and 3. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Super One Addition Preliminary Plat Application and Exhibit A-17)
7. *The applicant is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

##### Natural and Man-Made Hazards

8. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)

9. A portion of the southeast corner of the property may be located within the Painted Rocks Dam inundation area. (Ravalli County GIS department data)
10. *To mitigate impacts on the public's health and safety, the following conditions shall be met:*
  - *The covenants shall include a statement regarding radon exposure. (Condition 2)*
  - *The protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
  - *The notifications document shall include a statement regarding the proximity of the Painted Rocks Dam inundation area. (Condition 1)*

**Conclusion of Law:**

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

**VARIANCE REQUEST**

The subdivider has requested a variance from Section 5-4-5(b)(2), which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots.

**Variance Analysis**

Section 7-3-5(a), RCSR, outlines two sets of criteria to be used in analyzing a variance request.

**Prerequisite Variance Criteria**

In order for a variance to be considered for approval, the BCC must first determine that the variance request meets these stipulations:

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

**Variance Review Criteria**

If and only if a positive determination is made on both of the prerequisite criteria, the BCC may then consider the variance for approval, based on the five variance review criteria:

- A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.
- B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.
- C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These

conditions shall not result from the past actions of the land's current or previous owner(s).

- D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.
- E. The variance will not cause a substantial increase in public costs.

Both sets of criteria were reviewed simultaneously. Findings for Prerequisite Criterion #1 are based on an analysis of Variance Review Criteria B and C. Findings for Prerequisite Criterion #2 are based on an analysis of Variance Review Criteria A, D, and E.

### **Five Variance Review Criteria**

**A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

#### **Findings of Fact:**

1. The applicant is proposing to expand the existing parking lot to provide accessways to both Lots 2 and 3. (Super One Addition Preliminary Plat Application)
2. The parking lot plans have received preliminary approval from the Ravalli County Road and bridge Department. (Exhibit A-9)
3. A paved parking lot currently exists on the subject property, and a "cross-easement" allows for unimpeded access to the entirety of the site. Additionally, existing pavement markings direct the flow of traffic through the property, facilitating the safe movement of vehicles. (Super One Preliminary Plat Application, Site Visit)
4. In an email dated August 27, 2007, David Ohnstad stated that he agreed that the granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties. (Exhibit A-11)
5. *To mitigate impacts of granting the variance on public health and safety, and adjoining properties, the following condition and requirement shall be met prior to final plan approval:*
  - *Prior to final plat approval, the accessways to Lots 2 and 3 shall be constructed as approved by the Road and Bridge Department. Prior to construction, the final parking lot plans are required to be reviewed and approved by the Road and Bridge Department. Post construction, the Road and Bridge Department will conduct a final review. Please see the Road and Bridge Department's Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements for more information. (Condition 10 and Final Plat Requirement 13)*
  - *Existing and proposed utility easements, as shown on the preliminary plat, shall be shown on the final plat. (Final Plat Requirement 2)*

#### **Conclusion of Law:**

With the condition and requirement of variance approval, the granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

**B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

**Findings of Fact**

1. The parking lot was constructed in 1998 for the purpose of providing access to the Super One grocery store and attached commercial units. (Super One Preliminary Plat Application)
2. According to construction specifications, the existing parking lot is made of four inches of  $\frac{3}{4}$ " minus crushed base course with three inches of asphalt surfacing course grade "B". (Super One Addition Preliminary Plat Application)
3. The Ravalli County Subdivision Regulations require that the applicant construct a road to serve Lots 2 and 3. The Regulations do not have standards for parking lots. (Section 5-4-5, RCSR)
4. In a conversation with David Ohnstad, Ravalli County Road and Bridge Department Supervisor, on November 8, 2007, planning staff learned that, while chip-sealing a road does increase the longevity of the travel surface, it does not last as long as a travel surface constructed to the specifications of the existing parking lot. (Conversation with David Ohnstad)
5. A "cross-easement" was filed with the Clerk and Records office in August of 1997 that clearly contemplated the future use of the property as providing multiple spaces for commercial enterprises. (Super One Addition Preliminary Plat Application)
6. In an email dated August 27, 2007, David Ohnstad stated that the Road and Bridge department would not oppose the granting of the variance with the information submitted in the application. (Exhibit A-11)
7. *As a condition of final plat approval, the accessways to Lots 2 and 3 shall be constructed as approved by the Road and Bridge Department. Prior to construction, the final parking lot plans are required to be reviewed and approved by the Road and Bridge Department. Post construction, the Road and Bridge Department will conduct a final review. Please see the Road and Bridge Department's Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements for more information. (Condition 10)*

**Conclusion of Law:**

The conditions upon which the variance is proposed are unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

**Finding of Fact:**

The parking lot is an existing physical condition that resulted from the past actions of the lands current or previous owner(s). (Super One Addition Preliminary Plat Application)

**Conclusion of Law:**

Physical conditions do not prevent the subdivider from meeting the strict letter of the regulations.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

**Findings of Fact:**

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres. The application complies with the interim zoning regulation. (Resolution 2038)
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.4:** Improve and maintain existing infrastructure and public services.

- The parking lot serving the Super One Foods grocery store has been maintained for over a decade. The parking lot is proposed to provide primary access to each lot within the subdivision. Additionally, the subdivider is proposing to improve portions of the parking area by constructing new paved approaches from the edge of the existing parking area to each new lot. (Super One Addition Preliminary Plat Application)
- *As a condition of final plat approval, the accessways to Lots 2 and 3 shall be constructed as approved by the Road and Bridge Department. Prior to construction, the final parking lot plans are required to be reviewed and approved by the Road and Bridge Department. Post construction, the Road and Bridge Department will conduct a final review. Please see the Road and Bridge Department's Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements for more information. (Condition 10)*

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs.

- The developer is proposing to construct new paved approaches from the edge of the existing parking area to the newly created lots. (Super One Addition Preliminary Plat Application)
- *As a condition of final plat approval, the accessways to Lots 2 and 3 shall be constructed as approved by the Road and Bridge Department. Prior to construction, the final parking lot plans are required to be reviewed and approved*



*by the Road and Bridge Department. Post construction, the Road and Bridge Department will conduct a final review. Please see the Road and Bridge Department's Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements for more information. (Condition 10)*

**Countywide Goal 6:** Promote and encourage a vibrant, sustainable, healthy economic environment that recognizes existing businesses and attracts new entrepreneurs.

**Countywide Policy 6.3:** Support development of business parks.

- The subdivider has proposed creating two additional commercial lots in an area of existing commercial development. (Super One Addition Preliminary Plat Application)

**Countywide Policy 6.8:** Encourage expansion of existing businesses and business recruitment efforts, which maintain and create better-paying jobs.

- Lot 2 is the proposed home of a branch of the Ravalli County Bank, which was founded in 1895 by Marcus Daly (<http://www.ravallibank.com/>). (Super One Addition Preliminary Plat Application)

Conclusions of Law:

1. The proposal complies with the interim zoning regulation.
2. Provisions in the Growth Policy appear to support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. The road improvement costs associated with not approving the variance would simply be passed on to consumers. (Super One Addition Preliminary Plat Application)
2. In an email dated August 27, 2007, David Ohnstad stated that he agreed that the granting of the variance will not cause a substantial increase in public costs. (Exhibit A-11)
3. *As a condition of final plat approval, the accessways to Lots 2 and 3 shall be constructed as approved by the Road and Bridge Department. Prior to construction, the final parking lot plans are required to be reviewed and approved by the Road and Bridge Department. Post construction, the Road and Bridge Department will conduct a final review. Please see the Road and Bridge Department's Policies on Subdivision Assessment Coordination and Tests & Specifications for Subdivision Infrastructure Improvements for more information. (Condition 10)*

Conclusion of Law:

The granting of the variance does not appear to substantially increase public costs.

**Prerequisite Variance Criteria**

**A. Strict compliance with these regulations will result in undue hardship.**

Findings of Fact:

1. The application states that a parking lot currently exists on the subject property, and that the parking lot will provide access to all lots within the subdivision. The parking lot is composed of four inches of ¾" minus crushed base course with three inches of asphalt surfacing course grade "B". Short accessways will be constructed to provide physical access to Lots 2 and 3. The accessways will meet the same construction standards as the existing parking lot. (Super One Preliminary Plat Application)
2. The variance application states that strict compliance with the subdivision regulations would require the removal of an existing paved travel surface currently designed to simultaneously accommodate large delivery trucks and passenger cars. (Super One Preliminary Plat Application)
3. The Ravalli County Subdivision Regulations do not include provisions for parking lots. (RCSR)
4. Criteria B and C of the variance criteria under Part 2 below were used to determine whether or not there is a hardship. There appear to be special conditions unique to this subdivision that would not necessitate strict compliance with the regulations.

Conclusion of Law:

Strict compliance with these regulations will result in undue hardship.

**B. Compliance is not essential to the public welfare.**

Finding of Fact:

Criteria A, D, and E of the variance criteria under Part 2 below can be used to determine whether or not compliance with Section 5-4-5(d) is essential to public welfare.

Conclusion of Law:

Compliance is not essential to the public welfare.

**C. Overall Findings and Conclusions on Hardship and Public Welfare**

Findings of Fact

1. Strict compliance with these regulations will result in undue hardship.
2. Compliance is not essential to the public welfare.

Conclusion of Law

The variance application provides evidence that there is an undue hardship and that compliance with the RCSR is not essential to the public welfare.

Commissioner Rokosch opened public comment.

Kristin stated they agree with the Staff Report as presented. She discussed condition number eight and nine.

Commissioner Rokosch asked for any further public comment, hearing none. He then closed public comment and opened Board deliberation for the one variance request.

**Commissioner Chilcott made a motion the variance request from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, which would require the developer to construct a hard-surfaced road within the subdivision to serve all lots, be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. Commissioner Thompson seconded the motion.**

Commissioner Rokosch questioned the base of the three inch asphalt. Julie replied in areas of high traffic they have three inch asphalt and the remainder of the parking lot is two inches.

Commissioner Driscoll asked about the drainage. Julie Titchbourne replied there is a large infiltration basin. She stated there will also be sub-drainage along the south side of the parking lot. Catch basins could be installed to help clean this up, but the parking lot is kept up nicely. Commissioner Driscoll expressed her concern of sediments going into the aquifer. Commissioner Rokosch expressed concern of storm water going into the aquifer. Julie replied catch basins could be cleaned out annually which would help treat the water. She indicated the lots could be conditioned with a "rain garden" which is a bio-filter. Commissioner Rokosch commented on the close proximity of Kootenai Creek. Julie suggested 200 feet of vegetation along with a 'grate' could filter the sediments. Julie stated they will work with DEQ for a vegetated swale.

Commissioner Rokosch called for any further Board comments, hearing none. **All voted 'aye'.**

Commissioner Rokosch opened Board deliberation for the remaining proposal.

Commissioner Rokosch requested reviewing the six criteria.

**1. Effects on Agriculture:** Commissioner Rokosch requested any mitigation offer for the impacts on agricultural land. Kristin replied they are talking about three acres of land that has not been used for agricultural purposes. They offer no mitigation at this time. Commissioner Grandstaff stated by paving this area it will be permanently taken out of agricultural production. Commissioner Chilcott stated his views of effects on agriculture are different from other members of the Board. He believes agricultural land is land used for farming and agricultural use. This area hasn't been used for farm land or agricultural operations. Commissioner Grandstaff stated it is a broad determination. Kristin asked how it can be determined as agricultural land. She can understand if it was direct agricultural use, however it is a grocery store that sells vegetables and other items. Commissioner Rokosch stated Exhibit A-15 states it has some agricultural use. It is his responsibility to address those of Statewide and local importance. He stated they are working with the best information they have. Commissioner Chilcott stated the last agricultural operation he remembers there was in the late 70's and it was horses. Horses

are not taxed as agricultural use. Commissioner Thompson stated he does not see agricultural use on the land. There is no water existing here and it is not being used for agricultural operations. There may be impacts but not on agricultural practices. He does not see a significant impact on agriculture.

Commissioner Rokosch stated the point is to mitigate the loss of agricultural land. He requested \$500 per lot to mitigate the impact. Commissioner Driscoll stated a bigger view point is like wetlands; you don't have to keep them but trade them. She stated they are trying to mitigate the loss of the land not for only the use but what it could have been. Commissioner Rokosch discussed the need to modify the subdivision regulations to clarify this issue.

Commissioner Chilcott stated most of the time they talk about residential land and effects on taxes, etc. He stated this is not like the net loss we anticipate on residential land. The Board talks often about the lack of revenue and budget shortfalls; here is an opportunity to increase the margin. Commissioner Rokosch stated he can appreciate this view but he is not looking at the economics. Commissioner Chilcott stated this is not agricultural land, and while it may have been at one point in time, it has not been utilized as such for a long time. He asked the other Board members 'how far back are we going to go'? Commissioner Grandstaff stated Board Members have a 'fundamental' disagreement in regard to this agricultural issue. She stated the criteria is very vague and thus can be interpreted any way they want. Kristin stated they are not offering any mitigation at this time due to the fact it is a grocery store that provides food for the community.

Commissioner Thompson stated on the effects of agriculture within the staff report, the minimal should state non-significant. Commissioner Rokosch stated he has no problem with the statement, the question is whether we are losing agricultural land or not.

Commissioner Rokosch called for a vote on the impacts.

**Commissioners Rokosch, Grandstaff and Driscoll voted significant. Commissioners Chilcott and Thompson voted non-significant.**

Commissioner Rokosch called for a vote on mitigation.

**Commissioners Rokosch, Grandstaff and Driscoll voted non-sufficient. Commissioners Chilcott and Thompson voted sufficient.**

## **2.Effects on Agricultural water user facilities:**

Commissioner Rokosch called for a vote on the impacts.

**All Commissioners voted non-significant.**

Commissioner Rokosch called for a vote on mitigation.

**All Commissioners voted sufficiently mitigated.**

**3. Effects on Local Services:** Tristan stated there is an error on the staff report for the Stevensville School District not being affected. Commissioner Rokosch then discussed the impacts on the Stevensville Rural Fire District. Julie stated they will pay the \$500 per lot contribution up front. Commissioner Rokosch reviewed the impacts on Public Health and Safety. He stated there is no mitigation offered for the impacts. He requested no mitigation to be reconsidered. Commissioner Chilcott stated there have been studies done for commercial property paying in more tax dollars than they receive in services. Commissioner Thompson stated improvements do raise taxes.

Commissioner Rokosch asked for any further comment on Public Safety, hearing none.

Commissioner Rokosch asked about the road being a State road but maintained by the County. Tristan replied they do have a couple of roads that are State but the County maintains them for plowing. He discussed constructing a new bank building. Further discussion followed regarding the actual bank building.

Commissioner Rokosch asked about the pro rata for the road. Commissioner Chilcott replied it is a county standard road. Pro rata is based on the cost to bring it up to a county standard. Commissioner Rokosch stated this is another consideration for modification of subdivision regulations with the amount of traffic increasing. Kristin stated the owners worked with the highway department to widen the road.

Commissioner Rokosch asked about the stop signs. Kristin replied they are going to paint STOP on the entrance. Commissioner Rokosch stated it is a recommendation in the final plat. Commissioner Driscoll asked if private entities can use a stop sign. Commissioner Chilcott replied they can make it a recommendation for a condition.

Commissioner Rokosch asked for any comments on local services. Tristan replied on page 14 of the staff report, the fifth bullet should be removed.

Commissioner Rokosch asked about the mitigation of impact on public safety. Kristin replied yes that is correct.

Commissioner Rokosch called for a vote on the impacts.

**Commissioners Rokosch and Grandstaff voted significant. Commissioners Driscoll, Chilcott and Thompson voted non-significant.**

Commissioner Rokosch called for a vote on mitigation.

**Commissioners Rokosch and Grandstaff voted non-sufficient. Commissioners Driscoll, Chilcott and Thompson voted sufficient.**

**4. Effects on Natural Environment:** Commissioner Grandstaff questioned the light pollution and the recommendation of cut-off lighting. Commissioner Chilcott replied it is full cutoff lighting.

Commissioner Rokosch called for a vote on the impacts.

**Commissioners Rokosch, Grandstaff, and Driscoll voted significant. Commissioners Chilcott and Thompson voted non-significant.**

Commissioner Rokosch called for a vote on mitigation.

**All voted sufficiently mitigated.**

**5. Effects on Wildlife and Wildlife Habitat:** Commissioner Driscoll questioned the waiver for the Bald Eagle. Tristan replied the waiver was granted on the basis of it currently being commercial. Commissioner Rokosch stated habitat does include Kootenai Creek. He disagrees with the waiver within the proximity of the commercial area. He discussed individual septic systems and the state standards. He questions whether it is adequate.

Commissioner Rokosch called for a vote on the impacts.

**Commissioners Rokosch and Grandstaff voted significant. Commissioners Chilcott, Driscoll and Thompson voted non-significant.**

Commissioner Rokosch called for a vote on mitigation.

**All voted sufficiently mitigated.**

**6. Effects on Public Health and Safety:** Commissioner Rokosch requested they revisit the previous conversation regarding vegetation swale. Julie replied they route the storm water to the vegetation area first and raise the grates for the sumps.

Commissioner Rokosch called for any further comment, hearing none.

Commissioner Rokosch called for a vote on the impacts.

**Commissioners Rokosch and Grandstaff voted significant. Commissioners Driscoll, Chilcott and Thompson voted non-significant.**

Commissioner Rokosch called for a vote on mitigation.

**All voted sufficiently mitigated.**

Commissioner Rokosch requested a motion.

**Commissioner Chilcott made a motion the Super One Addition Minor Subdivision be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report along with the mitigation today of adding the vegetation swales on Lots 2 & 3. Commissioner Driscoll seconded the motion.**

Commissioner Rokosch stated he has a problem with the mitigation offered for Public Health and Safety and the effects on agriculture use. Commissioner Grandstaff concurred. Kristin replied it is up to the Commissioners to add conditions.

**Commissioners Chilcott, Thompson and Driscoll voted 'aye'. Commissioners Rokosch and Grandstaff voted 'nay'.**